

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARK BRIAN WARNER,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. C24-5414-KKE-MLP

ORDER DENYING MOTIONS FOR  
RELIEF FROM JUDGMENT

This matter comes before the Court on Petitioner Mark Brian Warner's four motions for relief from judgment under Federal Rule of Civil Procedure 60(b)(4). Dkt. Nos. 19, 22, 27, 28. For the below reasons, the Court denies each motion.

Mr. Warner filed his petition for writ of habeas corpus in May 2024. Dkt. No. 1. On July 26, 2024, Magistrate Judge Michelle L. Peterson issued a report and recommendation ("R&R") concluding that Mr. Warner's habeas petition should be dismissed without prejudice for failure to exhaust his remedies in state court. Dkt. No. 12. The R&R further concluded "Petitioner is not entitled to a certificate of appealability" because he did not show reasonable jurists could disagree with the outcome of his habeas petition. *Id.* at 3. Mr. Warner timely filed objections to the R&R. Dkt. Nos. 13, 14. This Court reviewed the R&R, remaining record, and each of Mr. Warner's objections de novo. Dkt. No. 17; *see* Fed. R. Civ. P. 72(b)(3) ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to.").

1 Ultimately, the Court adopted the R&R because “none of Mr. Warner’s objections, or the  
2 remainder of the record, cure Mr. Warner’s failure to exhaust state court remedies[.]” Dkt. No. 17  
3 at 4. The Court overruled Mr. Warner’s objections, adopted the R&R, dismissed the petition, and  
4 denied a certificate of appealability. *Id.*

5 Each of Mr. Warner’s motions seeks relief under Federal Rule of Civil Procedure 60(b)(4),  
6 which allows a court to relieve a party from final judgment if “the judgment is void[.]” “Rule  
7 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of  
8 jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity  
9 to be heard.” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). “An  
10 incorrectly decided judgment is not itself sufficient to render a judgment void.” *Matter of Redondo*  
11 *Special, LLC*, 699 F. Supp. 3d 893, 895 (C.D. Cal. 2023). Mr. Warner does not identify any reason  
12 why the judgment would be “void.” Instead, Mr. Warner argues the Court made various mistakes,  
13 which is more properly considered under Federal Rule of Civil Procedure 60(b)(1) or in a motion  
14 for reconsideration under Local Rule 7(h). *See Colbert v. Haynes*, No. C18-1350-RSM, 2020 WL  
15 70262, at \*2 (W.D. Wash. Jan. 7, 2020) (explaining Rule 60(b)(1) “provides the court with  
16 discretion to correct a judgment for mistake or inadvertence made by counsel or by the court  
17 itself”). Regardless of the rule Mr. Warner invokes for his motion for relief from a judgment,  
18 however, Mr. Warner fails to identify any errors made by the Court.

19 Mr. Warner makes five arguments for why he is entitled to relief from the judgment  
20 dismissing his habeas petition without prejudice. Dkt. Nos. 19, 22, 26–28.<sup>1</sup> The Court will address  
21 each of Mr. Warner’s arguments in turn.

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24 <sup>1</sup> While only four of Mr. Warner’s filings are entitled “motion for relief from judgment,” the Court identifies five substantive arguments for relief in the record.

1 First, Mr. Warner argues the Court failed to “conduct de novo review of the Request for  
2 Certification.” Dkt. No. 19 at 1. The record in this case uses the term “certification” in two ways.  
3 Regardless of which type of “certification” Mr. Warner complains of here, the Court did not err.  
4 The first use of “certification” in the record is Mr. Warner’s request for certification asking the  
5 Court to certify a question to the Washington State Supreme Court. Dkt. No. 4-4. In his objection  
6 to the R&R, Mr. Warner stated, “The Report and Recommendation failed to address Petitioner’s  
7 Request for Certification in the [sic] 28 U.S.C. § 2241.” Dkt. No. 13 at 1. Accordingly, in the  
8 order adopting the R&R, the Court performed de novo review of Mr. Warner’s request for  
9 certification (Dkt. No. 4-4) and held that the R&R did address this request and was “correct in  
10 concluding that none of these documents or requests change the determinative fact that Mr. Warner  
11 has failed to exhaust his state court remedies, requiring dismissal.” Dkt. No. 17 at 2. The Court  
12 properly considered Mr. Warner’s request for certification of a question to the Washington  
13 Supreme Court and all objections arising from such request. The second instance of the term  
14 “certification” is used by the Court in terms of a certificate of appealability. The R&R declined to  
15 issue a certificate of appealability. Dkt. No. 12 at 3. Mr. Warner never objected to this denial of  
16 a certificate of appealability. Dkt. Nos. 13–16. The Court is only required to conduct de novo  
17 review of the “any part of the magistrate judge’s disposition that has been properly objected to.”  
18 Fed. R. Civ. P. 72(b)(3). Thus, the Court acted properly when it did not perform a de novo review  
19 of the R&R’s holding denying a certificate of appealability, and the adoption of that holding is  
20 correct. Mr. Warner’s first argument for relief from judgment fails.

21 Second, Mr. Warner argues the Court failed “to conduct de novo review of Petitioner’s  
22 Affidavit In Support of 28 U.S.C. section 2241.” Dkt. No. 22 at 1. Mr. Warner raised this same  
23 objection in response to the R&R. Dkt. No. 13 at 1. The Court explicitly addressed this objection  
24 de novo in its order adopting the R&R and found the R&R properly considered this document.

1 Dkt. No. 17 at 2. The affidavit Mr. Warner filed with his petition (Dkt. No. 4-3) was properly  
2 considered at each stage of his case. The second argument for relief from judgment fails.

3 Third, Mr. Warner argues the Court failed “to conduct de novo review of [the] MOTION  
4 REQUESTING JUDICIAL NOTICE In Support of 28 U.S.C. § 2241.” Dkt. No. 26 at 1. Again,  
5 Mr. Warner raised this objection in response to the R&R. Dkt. No. 13 at 2. And the Court  
6 explicitly addressed the objection de novo in its order adopting the R&R, finding “the request(s)  
7 for judicial notice do not change the necessity for dismissal, the Court overrules this objection.”  
8 Dkt. No. 17 at 2–3. The Court properly considered Mr. Warner’s motion requesting judicial notice  
9 and the third argument for relief from judgment fails.

10 Fourth, Mr. Warner argues the Court failed “to conduct de novo review of [the] MOTION  
11 REQUESTING BRADY ORDER.” Dkt. No. 27 at 1. There is no such motion on the docket. If  
12 Mr. Warner is referring to his motion to request discovery (Dkt. No. 8) which references *Brady v.*  
13 *Maryland*, 373 U.S. 83 (1963), or his objection that the R&R “failed to order the respondent to  
14 produce a certified copy of the Arrest Warrant” (Dkt. No. 13 at 2), the Court addressed both of  
15 these requests in its order. Dkt. No. 17 at 2 (explaining the R&R addressed the request for a copy  
16 of the arrest warrant and multiple motions for discovery and correctly concluded “none of these  
17 documents or requests change the determinative fact that Mr. Warner has failed to exhaust his state  
18 court remedies”). Mr. Warner’s fourth argument for relief from judgment fails.

19 Fifth, Mr. Warner argues the Court failed to “conduct de novo review of [the] MOTION  
20 FOR EVIDENTIARY HEARING.” Dkt. No. 28. Mr. Warner raised this objection in response to  
21 the R&R. Dkt. No. 13 at 2. The Court explicitly addressed and rejected this objection de novo in  
22 its order adopting the R&R, explaining “[b]ecause Mr. Warner has not identified any evidence that  
23 he could present at an evidentiary hearing that would call into question the conclusion that his  
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1 petition must be dismissed due to his failure to exhaust his state court remedies, the court also  
2 overrules this objection.” Dkt. No. 17 at 3. The fifth argument for relief from judgment fails.

3 The R&R and order dismissing Mr. Warner’s case without prejudice for failure to exhaust  
4 state remedies properly considered all of the evidence. Mr. Warner has failed to identify any error  
5 in the Court’s prior order dismissing the case. Accordingly, his motions for relief from judgment  
6 are denied. Dkt. Nos. 19, 22, 27, 28.

7 Because Mr. Warner still fails to raise any argument regarding his failure to exhaust his  
8 state court remedies, the Court denies a certificate of appealability of this order.

9 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
10 to any party appearing pro se at said party’s last known address.

11 Dated this 22nd day of October, 2024.

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14 Kymberly K. Evanson  
15 United States District Judge  
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